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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/594,082	09/25/2006	Carsten Klocke	KLOCKE 3	8820
1444 7590 10/26/2009 BROWDY AND NEIMARK, P.L.L.C. 624 NINTH STREET, NW SUITE 300 WASHINGTON, DC 20001-5303				
EXAMINER VARNUM, RYAN A				
ART UNIT		PAPER NUMBER		
3751				
MAIL DATE		DELIVERY MODE		
10/26/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/594,082

Applicant(s)

KLOCKE ET AL.

Examiner

RYAN A. VARNUM

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2006.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1, 2 and 6 is/are rejected.
7) ☒ Claim(s) 3-5 and 7-9 is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date 9/25/2006
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Oath/Declaration

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because: Non-initialed and/or non-dated alterations have been made to the oath or declaration. See 37 CFR 1.52(c).

2. The declaration filed on 9/25/2006 lacks a date of signature for the second named inventor. Appropriate correction is required.

Specification

3. The abstract of the disclosure is objected to due to the use of language which may be implied ("The invention relates to"; Line 1) as well as the use of legal phraseology ("said"; Line 2). Correction is required. See MPEP § 608.01(b).
4. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The

disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Claim Objections

5. Claims 1-3 are objected to due to the following informalities: the use of the shorthand notation "..." in the claim language (Claim 1, Lines 3-4; Claim 2, Line 2; and Claim 3, Line 3).
6. The Examiner recognizes that Applicant is permitted to use reference characters corresponding to elements recited in the detailed description and the drawings in conjunction with the recitation of the same element or group of elements in the claims [MPEP 608.01(m)].
7. However, it is the Examiner's opinion that the use of the shorthand notation "..." fails to sufficiently reference any corresponding elements for two reasons. First and foremost, the shorthand notation of "..." is not a character reference used in the specification or drawings. Secondly, it is unclear which character references and/or elements are meant to be encompassed by such shorthand notation. This is especially true where, as in this instance, the same shorthand notation appears to reference different elements throughout the claimed language. Appropriate correction is required.
8. Claims 3 and 7-9 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim should claim dependency to previous claims in the alternative only. See MPEP § 608.01(n). Accordingly, claims 3 and 7-9 have not been further treated on the merits.

9. Claims 4 and 5 are objected to under 37 CFR 1.75(c) as being in improper form as a result of their dependency on the improper dependent Claim 3. Accordingly, claims 4 and 5 have not been further treated on the merits.

Claim Rejections - 35 USC § 112

10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

11. Claims 1, 3 and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

12. In re Claim 1, the claim language recites the limitation "the contact surface" (Line 4). There is insufficient antecedent basis for this limitation in the claims.

13. In re Claims 3 and 7, the claim language recites the limitation "the at least one nozzle-shaped section" (Lines 2-3 in both). There is insufficient antecedent basis for this limitation in the claims.

14. In re Claim 6, the phrase "such as" (Line 2) renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim Rejections - 35 USC § 102

15. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

16. Claims 1, 2 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by DeVries (US Patent 4,140,409).

17. In re Claim 1, DeVries discloses a packaging comprising an applicator (Fig. 1; Column 2, Line 37) for applying liquid and pasty media, characterized in that the applicator consists of a material which is permeable to the medium ("sponge"; Column 2, Line 37) and covers a dispensing opening 28 ("prescored portion"; Fig. 2; Column 2, Line 38) of the packaging, to which it is connected at least in partial areas of the contact surface (See Fig.' 1 and 6).

18. In re Claims 2 and 6, DeVries further discloses a deep-drawn packaging 12 ("vacuum formed container"; Fig. 1; Column 2, Line 20) having at least one deep-drawn cup 14 ("large raised portion"; Fig. 1; Column 2, Line 22) and a sealed-on cover film 34 ("metal film"; Fig 4; Column 2, Lines 45-48); and the applicator consists of absorbent material comprising a foamed material ("sponge"; Column 2, Line 37).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RYAN A. VARNUM whose telephone number is (571) 270-7853. The examiner can normally be reached on Monday - Friday, 9:00 AM - 5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. A. V./
Examiner, Art Unit 3751

/David J. Walczak/
Primary Examiner, Art Unit 3751